

MISSOURI COURT OF APPEALS WESTERN DISTRICT

STATE OF MISSOURI,

v.

CHRISTOPHER D. HENDREN,

Respondent,

Appellant.

DOCKET NUMBER WD78751

Date: March 21, 2017

Appeal from:
Johnson County Circuit Court
The Honorable William B. Collins, Judge

Appellate Judges:
Division Three: Aloka Ahuja, P.J., Victor C. Howard and James E. Welsh, JJ.

Attorneys:
Craig A. Johnston, Columbia, for appellant
Karen L. Kramer, Jefferson City for respondent

**MISSOURI APPELLATE COURT OPINION
SUMMARY
COURT OF APPEALS -- WESTERN DISTRICT**

STATE OF MISSOURI

v.

CHRISTOPHER D. HENDREN,

Respondent,

Appellant.

WD78751

Johnson County

Following a bench trial in the Circuit Court of Johnson County, Appellant Christopher Hendren was convicted of felony murder, armed criminal action, and burglary in the first degree. The convictions stem from an incident in which Hendren entered the home of Walter Feldman with Walter's son Jacob after Walter was asleep. Both Hendren and Jacob were armed when they entered. They stole marijuana from Walter, and murdered him.

Hendren appeals. He argues that the circuit court erred in convicting him of *felony* second-degree murder (meaning a death caused during the perpetration of another felony), because the charging instrument charged him only with *conventional* second-degree murder (for knowingly causing Walter's death by shooting him). Hendren contends that he was denied adequate notice of the charges against him, as required by the due-process guarantees of the United States and Missouri constitutions. Hendren further contends that there was insufficient evidence to prove that he knowingly entered Walter's house unlawfully, as required to support his burglary conviction.

AFFIRMED.

Division Three holds:

Section 565.021.1, RSMo defines the offense of second-degree murder, including both "conventional" and "felony" second-degree murder. Further, section 565.021.3 provides that, "in any charge of murder in the second degree, . . . in a jury-waived trial, the judge shall consider, any and all of the subdivisions in

subsection 1 of this section which are supported by the evidence and requested by one of the parties or the court.” By virtue of § 565.021.3, Hendren had notice of the possibility that, although he was charged with conventional second-degree murder, he could be convicted of felony murder if the facts warranted. Moreover, the charging instrument also charged Hendren with first-degree burglary, the underlying felony which formed the basis for his felony-murder conviction. The charging instrument, in conjunction with § 565.021.3, provided Hendren with adequate notice of the charges of which he was ultimately convicted. The present situation is analogous to cases in which a defendant is convicted of a lesser-included offense, or is convicted on a theory of accomplice liability even though the defendant was charged only as a principal.

In addition, Hendren has not identified any way in which his defense of the charges against him was prejudiced based on the variance between the charging instrument and the theory on which he was convicted. All of the evidence that was admitted at trial was relevant to the offenses with which Hendren was charged (conventional second-degree murder, armed criminal action, and burglary), and also served to establish his guilt of the offense of felony murder – namely, that Walter was killed in the perpetration of the felony of burglary in which Hendren was an active participant. Hendren had an incentive to contest the allegations that he had committed the offenses as charged; the court relied on those same allegations to convict Hendren of felony murder.

Hendren also argues that his burglary conviction must be reversed, because the evidence was insufficient to establish that he knew when he entered Walter’s home that he was entering unlawfully, without a license or privilege to do so. Hendren emphasizes that he entered the home accompanied by Walter’s son Jason, who had recently resided in the home and been a guest there.

Viewing this evidence in the light most favorable to the verdict, a reasonable fact-finder could conclude that Hendren knew that he and Jacob did not have a license or privilege to enter Walter’s house on the night of the murder, and that his entry was therefore knowingly unlawful. Jacob was not living in his father’s home on the night of the murder, but had moved out claiming that his father was physically abusive. Jacob and Hendren entered the home at night after Walter was asleep, and armed themselves before entering. Before they entered, Jacob had told Hendren “that his dad would probably wake up swinging, and that if he had to, he was going to protect himself.”

Before: Division Three: Alok Ahuja, P.J., Victor C. Howard and James E. Welsh, JJ.

Opinion by: Alok Ahuja, Judge

March 21, 2017

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